

**Public inquiry into final access determinations for fixed line services —
primary price terms**

Further Draft Decision – Outstanding Issues

June 2015

Supplementary Submission by iiNet Limited

1. Introduction and reason for this supplementary submission

The Australian Competition and Consumer Commission (**ACCC**) is currently undertaking public inquiries into making new final access determinations (**FADs**) for seven fixed line services (**the Declared Services**).¹

In July 2014 the ACCC released a discussion paper about the primary price terms for the FADs for the Declared Services (**the Discussion Paper**). In October 2014 the ACCC released a position statement on the treatment of the arrangements between Telstra and NBN Co (**the NBN Position Statement**). In March 2015 the ACCC issued a draft decision entitled: *Public inquiry into final access determinations for fixed line service — primary price terms* (**the March Draft Decision**). The March Draft Decision related to:

- the primary price terms for the Declared Services;
- one supplementary price term;
- the scope of the standard access obligations (**SAOs**) for the Declared Services.

The non-price terms and other supplementary prices to be included in the Declared Services FADs are subject to a separate consultation and draft decision.

Although the ACCC reached conclusions on a large number of issues in the March Draft Decision, conclusions on some key issues were left outstanding. The ACCC has released a further draft decision that addresses those outstanding issues (**the June Draft Decision**).

In response to the June Draft Decision the ACCC received a submission from the Department of Communications (**the Department**) dated 17 July 2015 which has been published on the ACCC's website² (**the Department's Submission**). iiNet notes that the Department had previously made a submission in response to the Discussion Paper³ and that submission followed an earlier submission by the NBN Co Shareholder Ministers.⁴ Although iiNet fully acknowledges that:

- the public inquiry into the fixed line FADs is a public process and anyone is permitted to provide a submission to the ACCC; and
- the Department has a legitimate interest in seeking to ensure that the ACCC is aware of the Department's views on the relevance of price stability to the implementation of NBN policy,

¹ These are: the Local Call Service (**LCS**), Line Sharing Service (**LSS**), the Fixed Originating Access Service (**FOAS**), the Fixed Terminating Access Service (**FTAS**), the Unconditioned Local Loop Service (**ULLS**) and the Wholesale Line Rental Service (**WLR**) and the Wholesale ADSL service (**WDSL**).

² Available at: <http://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services/fixed-line-services-fad-inquiry-2013/further-draft-decision>

³ Available at: <http://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services/fixed-line-services-fad-inquiry-2013/consultation-on-primary-prices#submissions-to-discussion-paper>

⁴ Available at: <http://www.accc.gov.au/regulated-infrastructure/communications/fixed-line-services/fixed-line-services-fad-inquiry-2013/consultation-on-primary-prices#early-submissions>

iiNet is concerned that the nature of the Department's Submission appears to indicate that the Department is unwilling to accept, and respect, the manner in which the ACCC is seeking to exercise its independent statutory functions. In light of this, iiNet feels compelled to provide a response to the Department's Submission.

2. iiNet's response to the Department's Submission

The Department's Submission addresses two broad issues:

- price stability; and
- Telstra's ability to recover its costs.

Price stability

As stated above, iiNet acknowledges that the Department may wish to make its views on the effect of price stability known to the ACCC. Nevertheless iiNet has concerns about the nature of the arguments the Department is making on price stability and the rigor with which it is pursuing those arguments.

As regards the nature of the Department's arguments on price stability, the Department's arguments appear to iiNet to lead to the following proposition:

Australian consumers should pay more than the economic value of the legacy services

While iiNet can understand Telstra pushing for such an outcome, iiNet is dismayed that a Government Department would seek to influence the ACCC to deliver such an outcome for consumers, particularly in the context of migration to the NBN being mandatory. iiNet submits that rational consumers will have no problems with being charged prices that reflect the economic value of the services they use. What consumers are likely to have a problem with is the ACCC setting prices above the economic value of the services simply because the Government believes that this would encourage faster migration to the NBN. Furthermore, any issues around price shock beg the question as to whether NBN Co's prices are reasonable. This is something that is not within the scope of the fixed line services FAD inquiry. iiNet submits that if there are legitimate concerns about customers experiencing price shock as a result of migration to the NBN, a more appropriate approach for the Department to consider (given that NBN Co's pricing is not within the scope of the fixed line services FAD inquiry) would be for NBN Co's shareholder Ministers to require NBN Co to review NBN Co's pricing in order to avoid any potential price shock.

As regards the rigor with which the Department is pursuing its arguments, it appears to iiNet that the Department's Submission does not raise any materially different arguments on price stability to the arguments that were made in the Department's response to the Discussion Paper and the earlier submission of NBN Co's Shareholder Ministers. In iiNet's view, given that the Department is not simply an interested stakeholder but an instrument of Government that has considerable power and influence, for the Department to choose to restate arguments that have already been made to, and considered by, the ACCC implies an unwillingness to accept that it is for the ACCC, and not the Department, to make the call on those issues. This raises obvious concerns for iiNet.

Telstra's cost recovery

As stated above, iiNet accepts that it is legitimate for the Department to make its views known on what it believes the effects of the ACCC's decision will be on the implementation of NBN policy. In contrast to this, iiNet believes it is simply extraordinary that the Department should seek to concern itself with issues relating to Telstra's cost recovery. iiNet submits that this shows a lack of respect for the clear demarcation between the roles of the ACCC and the Department, and this raises obvious concerns for iiNet. This is particularly so given that the Department's Submission on this issue appears to consist largely of restating arguments that Telstra has already made about its perceived inability to recover its costs. iiNet's response to Telstra's arguments on this issue are set out in iiNet's submission in response to the June Draft Decision.⁵

iiNet submits that given that the Department is an instrument of Government with considerable power and influence, the fact that the Department has chosen to support Telstra's arguments on cost recovery should not lead to those arguments being given more weight. Otherwise there is a danger that the Department will have usurped a function which, by law, rests with the ACCC.

iiNet Limited
30 July 2015

⁵ iiNet submission 17 July 2015, section 6.